

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:06

PLR-111796-08

Date:

July 14, 2008

### Legend

Parent =

Taxpayer =

State =

Court =

Agency =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 5 =

Dear :

This responds to a letter dated March 4, 2008, submitted on behalf of Taxpayer, requesting a ruling under section 1502 and the Treasury Regulations thereunder. The material information is summarized below.

Taxpayer was formed in Year 1 as a State corporation that was wholly owned by Parent. The information submitted indicates that Parent is a corporation which is the parent of an affiliated group of corporations, and files a consolidated return. Until Year 2, Taxpayer met the § 816 definition of a "life insurance company," and, therefore, was not a corporation that was includible in Parent's consolidated group. Parent did not make an election under § 1504(c)(2) to file a life-nonlife consolidated return. As of Year 2, however, Taxpayer did not possess the requisite percentage of life insurance reserves as required by § 816 and, therefore, failed to satisfy the definition of life insurance company. On Date 5, under a final order of liquidation with a finding of insolvency, Court granted Agency the authority to liquidate and wind up the affairs of Taxpayer. Taxpayer will remain in existence during the liquidation process.

Taxpayer believes that it continues to be a wholly owned subsidiary of Parent. Taxpayer has provided its separate company tax information to Parent for taxable Year 2 and Year 3 for inclusion in Parent's consolidated return. Taxpayer has not filed separate federal income tax returns for such years. However, Taxpayer believes it has not been included in the Parent consolidated federal income tax return for such years.

Treas. Reg. § 1.1502-77(a)(6)(i) provides in part that the Commissioner may, upon issuing to the common parent written notice that expressly invokes the authority of that provision, deal directly with any member of the group with respect to its liability under § 1.1502-6 for the consolidated tax of the group. Treas. Reg. § 1.1502-6(a) provides in part that the common parent and each subsidiary which was a member of the group during any part of the consolidated return year shall be severally liable for the tax for such year.

In a letter dated April 18, 2008, this office gave notice to Parent that, pursuant to Treas. Reg. § 1.1502-77(a)(6)(i) (to the extent that Taxpayer was a member of the Parent consolidated group), this office would deal directly with Taxpayer for the sole purpose of considering Taxpayer's request for a ruling as to whether Taxpayer is a member of the Parent consolidated group.

Section 1.1502-75(a)(2) provides generally that a group of affiliated corporations which

filed a consolidated federal income tax return for a previous year must continue to file as a consolidated group unless permission to discontinue consolidation under Treas. Reg. § 1.1502-75(c) is granted. Section 1504 provides in part that a corporation is a member of an affiliated group so long as it is both an includible corporation and at least 80 percent of its stock, as measured by vote and value, is held by either the common parent or by another member or other members of the group that themselves meet the 80 percent vote and value test.

The status of a corporation as bankrupt or insolvent does not in itself affect the status of a corporation as member of an affiliated group. See Rev. Rul. 63-104, 1963-1 C.B. 172, holding that an affiliated group of corporations must continue to file consolidated returns where a member of the group is involved in bankruptcy proceedings and the trustee in bankruptcy fails or refuses to file a Form 1122 consenting to the filing of such return. Furthermore, Rev. Rul. 84-170, 1984-2 C.B. 245, holds that a state superintendent must continue to file a federal income tax return for an insurance company so long as the company is considered to continue in existence for federal income tax purposes.

The following representations have been made in connection with the ruling request:

- (a) Beginning with tax Year 2, Taxpayer does not meet the definition of a “life insurance company” under I.R.C. § 816.
- (b) Parent owns 80 percent or greater of the vote and value of Taxpayer’s shares of stock subject to the authority granted to Agency under a State statute.
- (c) Parent files a U.S. consolidated tax return.
- (d) Taxpayer has prepared and delivered to Parent pro forma 1120-PC tax returns for Year 2 and Year 3. Taxpayer intends to prepare and deliver to Parent a pro forma 1120-PC tax return for Year 4.

Based on the information supplied and representations made by Taxpayer, it is held as follows:

(1) Taxpayer is a member of the Parent affiliated group and must be included in the Parent group’s consolidated federal income tax return as long as Taxpayer continues to meet the tests for affiliation under section 1504, unless and until permission to discontinue consolidation under Treas. Reg. § 1.1502-75(c) is granted to Parent.

(2) Unless permission to discontinue consolidation under Treas. Reg. § 1.1502-75(c) is or has been granted to Parent, Taxpayer may not file a separate company tax return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Alfred C. Bishop, Jr.  
Branch Chief, Branch 6  
(Corporate)

cc: